

Message Text

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ACTION SCS-03

INFO OCT-01 NEA-09 ISO-00 L-03 /016 W

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R 051900Z SEP 74

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 3711

LIMITED OFFICIAL USE NEW DELHI 11833

FOLLOWING SENT ACTION NEW DELHI FROM CALCUTTA ON SEP 4 1974
NOW REPEATED FOR YOUR INFO.

QUOTE

LIMITED OFFICIAL USE CALCUTTA 1843

E.O. 11652: N/A

TAGS: CASC, PFOR, IN

SUBJ: HARCOS/FLETCHER

REF: CALCUTTA 1842

1.DEFENSE ACCESS TO DOCUMENTATION: DURING TODAY'S HEARING, THE PROSECUTION MADE KNOWN ITS INTENTION TO APPEAL THE PRESIDING JUDGE'S RULING GRANTING THE DEFENSE ACCESS TO THE DOCUMENTATION OF THE STATE'S CASE AGAINST THE PRISONERS.

2. HAVING PUT MY VIEWS ON THIS MATTER IN WRITING TO THE CHIEF SECRETARY THE PREVIOUS DAY (REFTEL), I CALLED HIM UPON LEARNING OF THIS RULING TO EXPRESS MY DISAPPOINTMENT. HE SAID HE HAD TAKEN MY VIEWS INTO ACCOUNT, BUT THAT THE GOVERNMENT'S LAWYERS FELT THAT THE PROCEDURES FOR THIS KIND OF TRIAL ARE CLEARLY LAID OUT (BASED ON THE UK PATTERN), AND THEY FEEL THAT THEY ARE OBLIGED TO APPEAL WHAT THEY REGARD AS AN ERRONEOUS RULING. CHIEF SECRETARY SAID HE FEELS HE CANNOT PREVENT THIS AND THAT THE MATTER SHOULD BE LEFT TO BE DECIDED BY THE HIGH COURT.

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3. COMMENT: THIS IS A SERIOUS DEVELOPMENT IN TWO RESPECTS.

FIRST, IT SHOWS THAT THE PROSECUTION IN EFFECT HOPES TO GET A CONVICTION WITHOUT GIVING THE PRISONERS ANY REAL CHANCE TO BE DEFENDED. SECONDLY, REGARDLESS OF THE OUTCOME OF THE APPEAL, A CONSIDERABLE DELAY IN THE START OF THE TRIAL WILL BE ENTAILED. UNLESS INSTRUCTED TO THE CONTRARY, I WILL RAISE THIS WITH THE CHIEF MINISTER AS SOON AS POSSIBLE.

4. CONSULAR ACCESS: CONSUL O'NEILL APPEARED AT TODAYS HEARING TO RECEIVED THE JUDGE'S RULING ON OUR REQUEST FOR CONTINUING CONSULAR ACCESS AFTER THE PRISONERS ARE MOVEDPBKBO RUSE ARREST (CALCUTTA 1825). PROSECUTION RAISED OBJECTIONS TO THIS ON GROUNDS THAT OUR ACCESS WAS NO LONGER REQUIRED ONCE THE ACCUSED WERE LET OUT OF JAIL ON HOUSE ARREST. THE JUDGE SET SEPT. 9 AS THE DATE ON WHICH HE WOULD MAKE A RULING AFTER WEIGHING PROSECUTION'S OBJECTIONS.

5. I ALSO RAISED THIS WITH CHIEF SECRETARY, AND HE AGREED THAT THE PROSECUTION'S OBJECTIONS WOULD BE WITHDRAWN BEFORE THE SEPT. 9 HEARING.
PICKERING UNQUOTE
MOYNIHAN

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